IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 573

EDWARD VALVES, INC., *Petitioner,*

v.

THE UNITED STATES OF AMERICA.

REPLY BRIEF FOR EDWARD VALVES, INC., PETITIONER.

Omissions and errors in the Government's brief in opposition to the petition in this cause require correction for a clear understanding of the issue presented. The factual error in respondent's brief (Resp. Br. p. 3) that there was a question involved in the pleadings in respect of commencement of renegotiation proceedings (as to which no issue has ever been raised) serves to befog the real issue presented. Respondent's statement of the question presented (Resp. Br. p. 2) contains the same error and further does not clearly state the real issue.

There is one and only one issue presented in this Court—as in the courts below. Petitioner entered a defense of law, in a court of law wherein the Government brought its action, that, since renegotiation proceedings were not completed within one year of commencement, any liability for alleged excessive profits was *discharged* by the terms of the Renegotiation Act itself. (Section 403(c)(3)) The question presented here is whether a defense of law—*discharge of liability* under Section 403(c)(3))—may be entered in the court of law wherein the alleged liability is asserted.

Respondent argues that a pure question of law can be considered only in the Tax Court by way of a petition thereto for a redetermination of the amount of excessive profits. Thus, under respondent's view, the petitioner was required to initiate a cumbersome, expensive Tax Court proceeding in order to present any and all issues—regardless of whether the sole issue be a defense in law, regardless of whether the issue goes to the validity of an order of the Administrative Board and the power of the Board to issue the order, regardless of whether the issue has anything to do with the determination of amount of excessive profits, and regardless of whether a Tax Court proceeding would amount to a circuitous and dilatory route to the courts and in which proceeding the Tax Court could add nothing. The Tax Court proceeding is a *de novo* proceeding to determine the amount of excessive profits and not a review of the determination of the War Contracts Price Adjustment Board. (Renegotiation Act, Section 403(e)(1)).

Respondent's disputation (Resp. Br. pp. 11-12) to the effect that the Court of Appeals for the Second Circuit in the case of *United States* v. *Wissahickon Tool Works,* 200 F. (2d) 936, decided the case on the merits as an alternative to a decision on jurisdictional grounds is a confused and fallacious argument. A decision on the merits depends on and follows a decision on jurisdiction—not alternatively. The decisions of the Court of Appeals for the Second Circuit in *Wissahickon* and of the Court of Appeals for the Seventh Circuit on the issue presented are squarely in conflict.

It is respectfully submitted that the petition for writ of certiorari should be granted.

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